

## **Opinion No. 64-50**

April 10, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Miss Jean Willis, Clerk of the District Court, Roswell, New Mexico

### **QUESTION**

#### QUESTIONS

What is the proper filing fee which should be charged by clerks of the district courts for the following types of cases:

1. Filing fee for appeals taken in civil cases from justice of the peace courts?
2. Filing fee for appeals taken in criminal cases from justice of the peace courts?
3. Filing fee for appeals taken from cases tried in Municipal Courts or Police Magistrate Courts?
4. Filing fee for appeals taken from administrative determinations of the state engineer?

#### CONCLUSIONS

1. \$ 6.25 is the docket fee chargeable for appeals of civil cases from a justice of the peace court.
2. \$ 2.50 is the docket fee chargeable for appeals of criminal cases from a justice of the peace court.
3. If the case appealed from Municipal Court or Police Magistrate Court is a "civil matter" the docket fee chargeable is \$ 16.00, however, if the case appealed as "criminal" in nature or "quasi-criminal," the filing fee is \$ 5.50.
4. \$ 16.00 is the docket fee chargeable for appeals of cases from the administrative decision of the state engineer.

### **OPINION**

#### ANALYSIS

First, you have inquired as to the proper filing fee chargeable for docketing appeals in the district courts from civil cases tried in the justice of the peace courts. This fee is \$

6.25, and is based upon the requirements of Section 36-18-5, N.M.S.A., 1953 Compilation, imposing a docket fee of five dollars (\$ 5.00) for civil cases appealed from a justice of the peace court, and also Section 1-1-8, N.M.S.A., 1953 Compilation, which imposes a fee of one dollar and fifty cents (\$ 1.50) for payment of the costs of compiling and printing the 1953 Compilation of New Mexico Statutes Annotated. See prior Attorney General's Opinions No. 61-74, dated August 11, 1961; No. 61-105, dated October 13, 1961.

The enactment of Chapter 20, Laws 1964, Special Session, providing for the imposition of an additional charge on the docketing of cases in the district court to defray the cost of expanding and improving the Supreme Court Building specifically exempts charging additional fees for appeals taken from justice of the peace courts. Section 2, Chapter 20, Laws 1964, Special Session, sets out in part:

"Section 2. There is hereby levied a fee of three dollars and fifty cents (\$ 3.50) upon each civil action filed in the office of the clerk of the various district courts of the state of New Mexico, **except appeals from justice of the peace courts**, which fee shall be paid to the clerk at the time of the filing of such action by the party so filing the same and which fee shall be in addition to the docketing fee now imposed by Section 16-3-53 New Mexico Statutes Annotated, 1953 Compilation, and in addition to the compilation fund fee imposed by Section 1-1-8 New Mexico Statutes Annotated, 1953 Compilation. . ." (Emphasis supplied).

Second, inquiry is made regarding the proper filing fee chargeable for docketing appeals taken in criminal cases from justice of the peace courts. The proper fee is \$ 2.50, and such amount is based upon the provision in Section 36-18-9 New Mexico Statutes Annotated, 1953 Compilation, specifying that a fee of \$ 2.50 is applicable in appeals from justice of the peace courts. See prior Attorney General's Opinion No. 61-105, dated October 13, 1961.

Third, the question is asked as to the proper docket fee chargeable for docketing cases appealed to the district courts from Municipal Courts or Police Magistrate Courts. The correct fee is \$ 16.00 if the matter appealed is a "civil matter" and the sum of \$ 5.50 if the case appealed is "criminal" in nature or "quasi-criminal."

The correct docket fees chargeable were discussed at length in our former Attorney General's Opinion No. 62-10, dated January, 1962, wherein it was noted that cases appealed from Municipal or Police Magistrate Courts may be either "civil matters" or "criminal" or "quasi-criminal." Dependent upon the precise nature of such cases the filing fee varies as designated supra. Since Laws 1964, Chapter 20, Section 2, quoted supra impose an additional sum of \$ 3.50 on all cases docketed in district courts except justice of the peace appeals, the additional \$ 3.50 sum is applicable in instances of appeals taken from such courts. A copy of Opinion No. 62-10, supra, is enclosed herewith for your information.

Fourth, inquiry is made as to the correct docket fee chargeable for appeals from administrative decisions of the state engineer. The correct fee is \$ 16.00, based upon the provisions of Section 75-11-33, N.M.S.A., 1953 Compilation, specifying that "the sum of \$ 12.50" is payable to the clerk of the district court for such appeals, and also Laws 1964, Chapter 20, Section 2, imposes the additional fee of \$ 3.50 for expansion and improvement of the New Mexico Supreme Court Building.